

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD MANNESTO,

Plaintiff-Appellant,

v

MICHELLE M. MANNISTO,

Defendant-Appellee.

UNPUBLISHED

May 23, 2000

No. No. 212043

Chippewa Circuit Court

LC No. 97-002714

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered following a bench trial. The trial court ruled that plaintiff failed to establish that defendant, plaintiff's adult daughter, agreed to enter into business with him or that plaintiff deeded his home to defendant in furtherance of such an agreement. The trial court further ruled that plaintiff's unclean hands barred equitable relief. On appeal, plaintiff argues that the trial court erred in failing to find that defendant was plaintiff's agent. Plaintiff further asserts that the court erred in refusing to order equitable relief. We disagree and affirm.

The existence of an agency relationship is a question of fact that we review for clear error. A finding of fact is clearly erroneous only if no evidence exists to support it or if the reviewing court on the entire record is left with a definite and firm conviction that the trial court made a mistake. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995); *Norcross Co v Turner-Fisher Associates*, 165 Mich App 170, 181; 418 NW2d 418 (1987).

We test the existence of an agency relationship for whether the alleged principal has the right to control the conduct of another. *St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 458 Mich 540, 557-558; 581 NW2d 707 (1998); *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992); *Mallory v Conida Warehouses, Inc*, 113 Mich App 280, 285; 317 NW2d 597 (1982). The purpose of an agent is to bring about, modify, affect, accept performance of, or terminate contractual obligations between the principal and third parties. *St. Clair*, *supra* at 557, quoting *Saums v Parfet*, 270 Mich 165, 172; 258 NW 235 (1935).

Plaintiff presented no evidence that he had the right to control the conduct of defendant or that defendant had any power to bring about, modify, or affect obligations or relationships between plaintiff and third parties. Although plaintiff made all the arrangements for the mortgage, only defendant was liable for repayment. Furthermore, the mortgage that defendant executed was on property titled in her name only. Defendant's act of signing the mortgage in no way obligated plaintiff or otherwise modified his relationships with third parties. We conclude, therefore, that the trial court did not err in failing to find that defendant was plaintiff's agent. Because we find no error, we do not address plaintiff's claim that defendant breached the duties of good faith and loyalty that agents owe to their principals.

We note that plaintiff also avers that defendant was in breach of contract. Plaintiff did not argue this theory before the trial court, and the court did not address the issue. Plaintiff's argument is therefore not preserved for review. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995).

Plaintiff finally contends that the trial court erred in ruling that the doctrine of unclean hands barred him from obtaining equitable relief. This Court reviews de novo a trial court's decision whether to grant equitable relief, *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997); *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995), and the findings of fact supporting the trial court's decision for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996); *Mitchell v Dahlberg*, 215 Mich App 718, 727; 547 NW2d 74 (1996).

One who seeks the aid of equity must come with clean hands. *Stachnik v Winkel*, 394 Mich 375, 386; 230 NW2d 529 (1975); *Isbell v Brighton Area Schools*, 199 Mich App 188, 189; 500 NW2d 748 (1993). Courts will deny equitable relief in the face of any overreaching or unfairness on behalf of the party seeking equity. *Royce v Duthler*, 209 Mich App 682, 689; 531 NW2d 817 (1995). The primary factor to be considered in determining whether a plaintiff has clean hands is whether he sought to mislead or deceive the other party. *Stachnik, supra* at 387. Courts focus on the deceit itself, rather than the defendant's reliance on the deceit. *Isbell, supra* at 190.

On appeal, plaintiff correctly asserts that only the acts connected to his dealings with defendant may be a basis for denying him equitable relief under the doctrine of unclean hands. *Stachnik, supra* at 387. At trial, plaintiff admitted that he deeded his home to defendant one month after the birth of his son, and before he learned of the sale of the feedmill. The trial court determined that in doing so, plaintiff involved defendant in a scheme to avoid repaying the state for benefits that the child had received. Furthermore, defendant included only his own name on the documents relating to the purchase of the proposed business venture, thereby inducing defendant to incur indebtedness without the promised return. We conclude, therefore, that the

trial court did not err in applying the doctrine of unclean hands so as to bar plaintiff's request for equitable relief.

Affirmed.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Peter D. O'Connell